

Top FBI Official Urges Agents to Use Warrantless Wiretaps on US Soil

Dell Cameron, William Turton : 4-5 minutes : 5/8/2024

House Intelligence Committee chair Mike Turner and ranking member Jim Himes blasted out invitations announcing a “bipartisan celebration” of the 702 program’s continuation last week. The event, which the lawmakers have dubbed FISA Fest, is being held in a reception room in the US Capitol building Wednesday night.

A House Intelligence Committee spokesperson did not respond to a request for comment.

Turner and Himes were instrumental in preserving the FBI’s warrantless access to 702 data. In countless “briefings” since October, the pair urged members of their respective parties to avoid reining in the FBI’s authority too greatly. Instead, the new procedures designed by the bureau itself were touted by both lawmakers as a sufficient bulwark against further abuse.

Narrowly winning that battle last month, Himes and Turner worked to kill an amendment that would have forced FBI employees to get search warrants before reviewing the communications of Americans swept up by the program. (The amendment, opposed by the Biden White House, failed in a tie vote, 212-212.) Instead, the FBI’s procedures, now part of the 702 statute, require employees to affirmatively “opt in” before accessing the wiretaps. They must also seek permission from an FBI attorney before conducting “batch queries” of the database. And queries for communications of elected officials, reporters, academics, and religious figures are now all deemed “sensitive” and require approval from higher up the chain of command.

Congress established Section 702 in 2008 to legitimize an existing surveillance program run by the National Security Agency (NSA) without congressional oversight or approval. The program, more narrowly defined at the time, intercepted communications that were at least partly domestic but included a target the government believed was a known terrorist. While bringing the surveillance under its authority, Congress has helped to steadily expand the scope of the surveillance to encompass a new slate of threats, from cybercrime and drug trafficking to arms proliferation.

While advocates for 702 surveillance often imply that Americans who are wiretapped are communicating with terrorists—a concoction that Turner himself repeatedly lent credence to this year—the allegation is dubious. Officially, it is the US government’s position that it is impossible to know which US citizens are being surveilled or even how many of them there are. The chief aim of the 702 program is to acquire “foreign intelligence information,” a term that encompasses not only terrorism and acts of sabotage but information necessary for the government to conduct its own “foreign affairs.”

Surveillance critics worry that the array of possible targets extends far beyond what is being characterized in unclassified settings. It is uncontroversial to suggest that the US government—like all governments with the power to spy—finds reasons to spy on foreign allies, businesses, even [news publications](#). So long as the target is foreign, they have no privacy rights.

The limits of the 702 program remain murky, even to congressional members insisting that it should not be curbed further. The Senate Intelligence Committee chair, Mark Warner, acknowledged to reporters this week that language in Section 702 needs to be “fixed,” even though he voted last month to make the current language law.

FISA experts had warned for months that new language introduced by the House Intelligence Committee is far too vague in the way it describes the categories of businesses the US government can compel, fearing that the government would obtain the power to force anyone with access to a

target's online communications into snooping on the NSA's behalf—IT workers and [data center staff](#) among them.

A trade group representing Google, Amazon, IBM, and Microsoft, among some of the world's other largest technology companies, [concurred last month](#), arguing that the new version of the surveillance program threatens to “dramatically expand the scope of entities and individuals” subject to Section 702 orders.

“We are working on it,” Warner [told The Record](#) on Monday. “I am absolutely committed to getting that fixed,” he said, suggesting the best time to do so would be “in the next intelligence bill.”

Updated at 6:18 pm ET, May 8, 2024: Added comments from the FBI.

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